

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**Brian Anderson,
dba Northwest Ready Mix
Dickinson County, Iowa**

ADMINISTRATIVE CONSENT ORDER

NO. 2011-AQ-10

TO: Brian Anderson, dba Northwest Ready Mix
2125 230th Ave.
Milford, IA 51351

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Brian Anderson, dba Northwest Ready Mix, for the purpose of resolving the air quality violations which occurred at property in Milford, Iowa on February 12, 2010. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Jeff Prier
Iowa Department of Natural Resources
Field Office No. 3
1900 N. Grand Ave.
Spencer, IA 51301
Phone: 712/262-4177

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to the provisions of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: BRIAN ANDERSON, DBA NORTHWEST READY MIX

III. STATEMENT OF FACTS

1. Brian Anderson, dba Northwest Ready Mix has a concrete production facility located at 2125 - 230th Avenue in Milford, Iowa (the site).

2. On February 12, 2010, Jeff Prier of DNR Field Office 3 observed black smoke coming from the site. Upon further investigation, Mr. Prier observed the burning of two tires and multiple shop rags containing petroleum fluid. The person conducting the fire, Mr. Brian Anderson, put the fire out upon request by Mr. Prier. Mr. Anderson stated that he was cleaning out the shop and was burning "shop rags and garbage." Mr. Prier informed Mr. Anderson that open burning is prohibited in the State of Iowa, and provided a copy of rule 567 IAC 23.2(455B), which describes the prohibition. Mr. Anderson also was informed that such materials would need to be properly disposed of in a landfill.

3. A February 16, 2010, Notice of Violation letter was issued by DNR regarding these violations.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The above facts demonstrate violations of this provision.

V. ORDER

THEREFORE, DNR orders Brian Anderson, dba Northwest Ready Mix, to do the following:

1. Pay a penalty of \$1,000.00 according to the following payment plan:

\$100.00 due May 1, 2011	\$100.00 due October 1, 2011
\$100.00 due June 1, 2011	\$100.00 due November 1, 2011
\$100.00 due July 1, 2011	\$100.00 due December 1, 2011
\$100.00 due August 1, 2011	\$100.00 due January 1, 2012
\$100.00 due September 1, 2011	\$100.00 due February 1, 2012

Payment shall be made to DNR at the following address:
Director of the Iowa DNR

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
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If Brian Anderson, dba Northwest Ready Mix, fails to timely make two payments pursuant to the above schedule, then the entire remaining amount of the penalty shall become due immediately.

2. Immediately cease illegal open burning of waste materials at any location in the State of Iowa and specifically at the site mentioned in this order, and comply in the future with all state and local requirements regarding the proper disposal of solid waste and the prohibition against illegal open burning.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$1,000.00 is assessed by this administrative order. The penalty shall be paid according to the penalty payment plan set out above. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Brian Anderson, dba Northwest Ready Mix, has achieved an economic benefit from open burning and improper waste disposal. He has saved time, labor, and landfill costs by not timely and properly removing, transporting and disposing of the waste from this site. A penalty of \$200.00 is assessed for this factor.

Gravity of the Violation – Improper open burning of old tires and shop rags can degrade air quality in the immediate area. The open burning of trade waste can release toxins that pollute the air and may pose a risk to human health and the environment. Further, the violation threatens the integrity of the regulatory program

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
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because compliance with the open burning regulations is required of all persons in this state. A penalty of \$300.00 is assessed for gravity of violation.

Culpability – Brian Anderson, dba Northwest Ready Mix, has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Therefore, \$500.00 is assessed for this factor.

VII. APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Brian Anderson, dba Northwest Ready Mix. For that reason, Brian Anderson, dba Northwest Ready Mix, waives the right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in this order. Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146.



Roger L. Lande, Director
Iowa Department of Natural Resources

Dated this 23rd day of
April, 2011.



Brian Anderson, dba Northwest Ready Mix

Dated this 13 day of
April, 2011.

Dickinson County Air Quality file; Anne Preziosi; DNR Field Office 3; VII.C.2